No. 83-916

In the Supreme Court of the United States

OCTOBER TERM, 1983

UNITED STATES OF AMERICA, PETITIONER

v.

ALLAN WAYNE MORTON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether the federal government may be held liable for reimbursement when it has, pursuant to 42 U.S.C. (Supp. V) 659, honored a facially valid writ of garnishment issued by a state court to collect alimony or child support owed by a federal employee, if a federal court later holds that the state court that issued the underlying judgment lacked personal jurisdiction over the employee.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-60a) is reported at 708 F.2d 680. The opinion of the Claims Court (Pet. App. 62a-95a) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on May 17, 1983. A timely petition for rehearing was denied on July 5, 1983 (Pet. App. 61a). On September 26, 1983, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including December 2, 1983. The petition was filed on that date and was granted on January 23, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

The relevant provisions of the Social Security Act, 42 U.S.C. (Supp. V) 659 *et seq.*, and the pertinent parts of the implementing regulations, 5 C.F.R. Pt. 581, as amended by 48 Fed. Reg. 26279-26294 (1983), are set forth in the appendix to this brief.

STATEMENT

1. Prior to 1974, the sovereign immunity of the United States barred writs garnishing the salaries of federal employees. See *FHA* v. *Burr*, 309 U.S. 242, 244 (1940); *Buchanan* v. *Alexander*, 45 U.S. (4 How.) 19, 20 (1846). In 1974, as one of several measures taken to facilitate the collection of alimony and child support, Congress enacted 42 U.S.C. 659,[1] which partially waived sovereign immunity and allowed garnishment of federal salaries to collect alimony and child support payments "in like manner and to the same extent as if the United States * * * were a private person." 42 U.S.C. (Supp. V) 659(a). However, under 42 U.S.C. (Supp. V) 659(f), which was added in 1977,[2] neither the government nor its disbursing officers may be held liable for amounts paid pursuant to legal process regular on its face, if such payment is made in accordance with this section and the regulations issued to carry out this section." The term "legal process" is defined by statute as "any writ * * * or other similar process in the nature of

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[1] Section 659 was originally enacted as part of the Social Services Amendments of 1974, Pub. L. No. 93-647, § 101(a), 88 Stat. 2357. The section was amended in 1977 and is now codified as 42 U.S.C. (Supp. V) 659(a).

[2] Tax Reduction and Simplification Act of 1977, Pub. L. No. 95-30, Tit. V, § 501(a), 91 Stat. 157.

garnishment" that, among other things, "is issued by * * * a court of competent jurisdiction" (42 U.S.C. (Supp. V) 662(e)(1)).

Pursuant to 42 U.S.C. (Supp. V) 661, the Office of Personnel Management has issued regulations implementing Section 659. See 5 C.F.R. Pt. 581, as amended by 48 Fed. Reg. 26279-26294 (1983). These regulations provide that federal disbursing agents must comply with a writ of garnishment except in certain enumerated circumstances, such as where there are jurisdictional defects apparent "on its face" or where the garnishment is not for alimony or child support. 5 C.F.R. 581.305(a)(1).

2. Respondent, a career Air Force officer, was sued for divorce in Alabama. Served by mail while stationed in Alaska, he failed to make an appearance in the Alabama suit on the advice of counsel that such service was insufficient.[3] On August 14, 1975, the Alabama court entered a default judgment granting the divorce and ordering him to pay alimony and child support. Subsequently, to enforce that judgment, Mrs. Morton obtained a writ of garnishment against respondent's federal pay. The writ, issued by the Register of the Tenth Judicial Circuit Court of Alabama, was on the "regular form" used in that State (Pet. App. 90a). Attached to the writ was a copy of the final judgment of divorce, which recited, inter alia: "'It appearing of record in this cause that the defendant was duly served and failed to appear * * *'" (*id.* at 38a (affidavit of James R. Russell)).

The Air Force Finance Office at Elmendorf Air Base in Alaska received the writ on December 27,

[3] Respondent was advised by an officer of the Air Force Judge Advocate General's office (Pet. App. 3a-4a).

1976, and promptly notified respondent (see 42 U.S.C. (Supp. V) 659(d)). Respondent, after seeking the advice of counsel, protested that his pay could not be garnished because he had not been served properly in the underlying state court proceeding and because he was neither a resident nor a domiciliary of Alabama (Pet. App. 4a, 37a-39a).[4] However, because the Alabama writ was "regular on its face," the Air Force filed an answer in the Tenth Judicial Circuit Court, confessing indebtedness of $4,100 to respondent, and later began making deductions from respondent's salary for payment to the court.[5] Other subsequent garnishment writs were likewise honored. Pet. App. 4a, 67a, 91a.

Several months later, respondent successfully sued in the former Court of Claims for recovery of this money, arguing that the Alabama court had lacked in personam jurisdiction (see Pet. App. 68a-95a). The trial judge concluded that "the Air Force Finance Office acted arbitrarily and illegally when it ignored [respondent's] protest that the Alabama court did not have jurisdiction to enter a money judgment against him for alimony and child support, made deductions from [respondent's] pay, and paid the money over to" the state court (*id.* at 81a).

3. A divided panel of the United States Court of Appeals for the Federal Circuit affirmed (Pet. App.

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[4] Respondent also claimed that he had already paid the obligation (Pet. App. 4a, 39a, 91a).

[5] Because the disbursing officer was under threat of personal suit, he contacted the United States Attorney in Birmingham, Alabama to ask whether service of process by registered mail was sufficient under Alabama law. The United States Attorney answered affirmatively. Pet. App. 40a.

1a-60a).[6] The court of appeals noted that the government is immune from suit under 42 U.S.C. (Supp. V) 659(f) only if payment is made "pursuant to legal process regular on its face" (Pet. App. 5a-7a). The court observed that "legal process" is defined by 42 U.S.C. 662(e)(1) as process "issued by * * * a court of competent jurisdiction," and interpreted "competent jurisdiction" to encompass personal as well as subject matter jurisdiction (Pet. App. 3a-11a). The court then determined that respondent's contacts with Alabama were insufficient to permit the courts of that State to exercise personal jurisdiction over him (see *International Shoe Co.* v. *State of Washington*, 326 U.S. 310 (1945)), and thus that the Alabama court was not "a court of competent jurisdiction."

The court of appeals therefore concluded that the State's garnishment writ was not "legal process" within the meaning of 42 U.S.C. (Supp. V) 659 and 662(e)(1) (Pet. App. 11a-18a).[7] It stated that "[t]o

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[6] Because this case was pending in the Court of Claims on October 1, 1982, jurisdiction over it was transferred to the newly created United States Court of Appeals for the Federal Circuit pursuant to Pub. L. No. 97-164, § 403, 96 Stat. 57. Thus, the absence of a final decision of the Claims Court or Court of Claims, within the meaning of Pub. L. No. 97-164, § 127(a), 96 Stat. 37, to be codified at 28 U.S.C. 1295(3), did not affect the jurisdiction of the court of appeals.

[7] The court of appeals also suggested (Pet. App. 8a) that alimony or child support orders entered by a court without personal jurisdiction over the defendant are not "legal obligations" under Section 659(a), which waives sovereign immunity for garnishment writs "for the enforcement, against such individual of his legal obligations to provide child support or make alimony payments."

hold otherwise and to require * * * [respondent], a resident of Alaska, to proceed in the Alabama state court against [his former wife] would, in effect, render those statutes violative of constitutional due process" (*id.* at 17a). The court also stated (*ibid.* (footnotes omitted)):

> [W]e hold that the immunity provisions of the garnishment statute permit the Government, where the process document is regular on its face, to make payment without liability on a presumption that the underlying judgment is valid, but that such a presumption is rebuttable by a showing that the Government had notice of a substantial claim of jurisdictional irregularity.

The court found that the government had such notice here and was consequently liable to respondent for the amount withheld from his salary pursuant to the writ (*id.* at 17a-18a).

Judge Nies dissented (Pet. App. 20a-55a). She concluded that a private employer would not be liable to respondent under the circumstances of this case (*id.* at 21a-31a) and that the government was, in any event, immune from respondent's suit under Section 659(f) because the garnishment writ was "regular on its face" (Pet. App. 33a-36a). Judge Nies added (*id.* at 47a):

> The majority decision will create chaos in how the Government must operate in the thousands of garnishments it faces daily. It must either pay twice, or where permitted by a state court, litigate for any employee who raises a "substantial claim of jurisdictional irregularity" regardless of the regularity of the process "on its face."

SUMMARY OF ARGUMENT

The federal garnishment statute, 42 U.S.C. (Supp. V) 659, subjects the federal government to garnishment writs for the enforcement of child support and alimony obligations "in like manner and to the same extent" as if it were a private person. The statute expressly insulates the government from liability for a payment made "pursuant to legal process regular on its face, if such payment is made in accordance with this section and the regulations issued to carry out this section." Despite these provisions, the court of appeals held the United States liable to respondent for payments made to respondent's former wife and children, pursuant to an Alabama state court garnishment writ that was regular on its face, on the ground that the state court that issued the underlying divorce decree and awarded alimony and child support lacked personal jurisdiction over respondent. The court of appeals' holding is clearly wrong and leads to unreasonable results.

A. The decision below conflicts with the plain language of the statute.

1. Although Section 659(a) subjects the government to garnishment writs "in like manner and to the same extent" as a private party, the court of appeals' decision would impose on the government far greater liability and responsibility for legal investigation, analysis, and litigation than is borne by private garnishees. Indeed, many state statutes, including that of Alabama, expressly insulate garnishees from liability under circumstances such as those here. A garnishee is obligated, at most, to notify the principal debtor of the action if he is not otherwise notified, to answer the state court summons, to state whether the garnishee owes money or property to the principal

debtor and, if so, the amount, and to comply with the writ of garnishment if it issues. As a mere stakeholder, the garnishee is not required to litigate on behalf of the principal debtor on issues (even jurisdictional issues) relating to the underlying obligation. Nor is the garnishee, as a private party, empowered to second-guess the jurisdictional holdings of the state court or to "refuse[] to honor" its process, as the court of appeals would require (Pet. App. 19a n.14).

2. Section 659(f) unequivocally provides that the federal government is not liable for payments made "pursuant to legal process regular on its face," and Section 662(e)(1) defines legal process to require issuance by "a court of competent jurisdiction." Although the court of appeals did not dispute that the Alabama state court garnishment writ was "regular on its face," it concluded that the immunity provision of Section 659(f) did not apply because there was no personal jurisdiction over respondent in the underlying divorce suit.

In context, however, the term "legal process regular on its face" cannot sensibly be interpreted to require an inquiry into the personal jurisdiction of the court that entered the judgment sought to be enforced by garnishment. Such an interpretation, in addition to distorting the usual meaning of the term "competent jurisdiction," would effectively read the qualifying term "regular on its face" out of the statute. In any event, the court of appeals' approach, permitting the government to comply with writs in the absence of notice of a "substantial claim of jurisdictional irregularity" (Pet. App. 17a (footnote omitted)), is supported by no possible reading of the statute.

3. The court of appeals' decision cannot be defended as necessary to protect respondent's due pro-

cess rights. Respondent received actual notice of the divorce suit and of the garnishment proceeding and had full opportunity to enter a special appearance to challenge the state court's jurisdiction. Having failed to do so, he can hardly claim that due process now entitles him to shift his losses to his employer.

B. Regulations authorized by Congress to implement Section 659 remove all discretion from federal disbursing officers to refuse to honor garnishment writs on the ground of asserted latent jurisdictional defects. The court of appeals disregarded these regulations, despite their intended "legislative effect." *Schweiker* v. *Gray Panthers*, 453 U.S. 34, 44 (1981).

C. The decision below is manifestly contrary to congressional intent. The purpose of the federal garnishment statute is to provide a means for expeditious enforcement of alimony and child support judgments against federal employees and retirees. Congress intended prompt compliance with state court garnishment writs that are regular on their face, without further legal obstacles. Yet the court of appeals would require extensive and time-consuming investigation for latent defects in the writ in all cases of an asserted "substantial claim of jurisdictional irregularity" (Pet. App. 17a (footnote omitted)).

The alternative courses of action potentially available to the government after investigation—to refuse to honor the writ, to litigate against the dependent spouse or children, or to institute interpleader litigation against the principal debtor and the spouse or children—would run directly counter to achievement of the statutory objectives. Moreover, requiring the federal government to "pay twice"—once to the spouse and a second time to the employee—if a court subsequently finds the prior garnishment writ defec-

tive would be unfair to federal taxpayers and contrary to principles of sovereign immunity in the absence of any indication that Congress was aware of, or intended to assume, such liability.

ARGUMENT

THE FEDERAL GOVERNMENT MAY NOT BE HELD LIABLE FOR REIMBURSEMENT WHEN IT HAS, PURSUANT TO 42 U.S.C. (SUPP. V) 659, HONORED A FACIALLY VALID WRIT OF GARNISHMENT

In the underlying dispute between respondent and his former wife and children, the United States is but a stakeholder. Congress has directed the federal government to honor state court writs of garnishment for alimony or child support and expressly immunized the government and its disbursing agents from liability for amounts paid "pursuant to legal process regular on its face, if such payment is made in accordance with this section and the regulations issued to carry out this section" (42 U.S.C. (Supp. V) 659(f)). Inevitably, some writs received by the federal government will be legally defective or challengeable, especially given the confused and conflicting assertions of jurisdiction typical in cross-state marital disputes among transient spouses. Yet the government and its agents are not required to intervene in the underlying litigation on behalf of either party, to investigate the legal merits of any defense the employee may have, to make legal judgments about the validity of facially valid state court orders, to file interpleader actions, or to subject themselves to state contempt proceedings or default judgments in order to challenge the validity of the writ. Congress has permitted the government to rely on the *facial* validity of the writ. The burden of legal research, in-

vestigation, and litigation must be borne by the employee involved.[8]

The court of appeals adopted a different approach. It would require the federal government to shoulder the burden of challenging the state court order, provided that the employee has given the disbursing officers notice of a possible defect in personal jurisdiction. This places an unmanageable burden on the government; in many instances, it will draw the government into marital disputes and cause the government to oppose the alimony and child support claims of former spouses and children. In addition, where the government has not taken adequate steps to challenge the validity of the garnishment writ, the decision below will require it to "pay twice"—once to the spouse and children, and a second time to the employee. Absent any indication that Congress intended these consequences, the statute should not be interpreted to lead to so unreasonable a result.

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[8] We therefore have not challenged before this Court the court of appeals' holding that the Alabama court that issued the writ of garnishment here lacked personal jurisdiction, even though that holding is of questionable validity. See *Orrox Corp.* v. *Orr*, 364 So.2d 1170 (Ala. 1978); *Taylor* v. *Taylor*, 44 Ill.2d 139, 254 N.E.2d 445 (1969); *McGlothen* v. *Superior Court*, 121 Cal. App. 3d 106, 175 Cal. Rptr. 129 (1981). If our position on the interpretation of Section 659 is correct, then disputes concerning personal jurisdiction in alimony and child support cases will be resolved not by the Federal Circuit in suits by one party against the United States, but in state courts in suits involving both of the actual parties in interest. See *Jizmerjian* v. *Department of Air Force*, 457 F. Supp. 820, 824 (D.S.C. 1978), aff'd, 607 F.2d 1001 (4th Cir. 1979), cert. denied, 444 U.S. 1082 (1980); *Cunningham* v. *Department of Navy*, 455 F. Supp. 1370, 1372 (D. Conn. 1978).

A. The Language Of The Garnishment Statute Precludes A Finding Of Liability Against The Government Where It Has Performed The Usual Duties Of A Garnishee And The Writ Was Regular On Its Face

The court of appeals' analysis is purportedly based upon the language of 42 U.S.C. (Supp. V) 659, but no fair reading of the statute supports its conclusion. We submit that the decision below is precluded both by Section 659(a), the provision as originally enacted in 1974, and by Section 659(f), which was added by amendment in 1977 to clarify the original intent.

1. Section 659(a) provides that wage and salary entitlements of employees of the United States shall be subject to legal process brought for the enforcement of alimony or child support "in like manner and to the same extent as if the United States * * * were a private person" (42 U.S.C. (Supp. V) 659(a)). As Judge Nies pointed out in dissent (Pet. App. 21a-28a), a private employer garnishee in Alabama, as in most other states, would be discharged from liability to an employee defendant under the circumstances of this case. See Ala. Code § 6-6-461 (1977).

The court of appeals' interpretation would subject the federal government to far greater liability and responsibility for legal investigation, analysis, and litigation than is borne by private garnishees. Many state statutes expressly insulate garnishees from liability under circumstances such as those present here. Alabama law provides that "[t]he judgment condemning the debt, demands, money or effects to the satisfaction of the plaintiff's demand is conclusive as between the garnishee and the defendant to the extent of such judgment, unless the defendant prosecutes to effect an appeal from such judgment" (Ala. Code § 6-6-461 (1977)). California law even more explicitly

provides (Cal. Civ. Proc. Code § 706.154(b) (West Cum. Supp. 1984)) that "an employer who complies with any written order or written notice which purports to be given or served in accordance with the provisions of this chapter [on garnishment] is not subject to any civil or criminal liability for such compliance unless the employer has actively participated in a fraud." Similarly, New York law (N.Y. Civ. Prac. Law § 5209 (McKinney 1978)) states:

> A person who, pursuant to an execution or order, pays or delivers, to the judgment creditor or a sheriff or receiver, money or other personal property in which a judgment debtor has or will have an interest, or so pays a debt he owes the judgment debtor, is discharged from his obligation to the judgment debtor to the extent of the payment or delivery.[9]

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[9] To similar effect are: Alaska Stat. § 09.40.040 (1983); Ariz. Rev. Stat. Ann. § 12-1592 (1982); Ark. Stat. Ann. § 31-146 (repl. 1962); Conn. Gen. Stat. Ann. § 52-344 (West 1960); D.C. Code Ann. § 16-573(c) (1981); Idaho Code § 8-510 (1979); Ill. Ann. Stat. ch. 62, § 44 (Smith-Hurd 1972); Ind. Code Ann. § 34-1-11-29 (Burns 1973); Iowa Code Ann. § 642.18 (West 1950); Md. Cts. & Jud. Proc. Code Ann. § 11-601(a) (repl. 1980); Mass. Ann. Laws ch. 246, § 43 (Michie/Law. Coop. 1974); Mich. Stat. Ann. § 27A.4061 (Callaghan rev. 1980) (applicable to garnishments against state); Minn. Stat. Ann. § 571.54 (West 1947); Miss. Code Ann. § 11-35-37 (1972); Mo. Ann. Stat. § 525.070 (Vernon 1953); N.H. Rev. Stat. Ann. § 512:38 (repl. 1983); N.J. Stat. Ann. § 2A:17-53 (West Cum. Supp. 1983) (applicable to garnishments against state and local governmental entities); N.D. Cent. Code § 32-09.1-15 (repl. Supp. 1983); Ohio Rev. Code Ann. § 2716.21(D) (Page Supp. 1982); Okla. Stat. Ann. tit. 12, § 1233 (West 1961); Or. Rev. Stat. § 29.195 (1981); S.D. Codified Laws Ann. §§ 21-18-32, 21-18-48 (rev. 1979); Tenn. Code Ann. § 29-7-117 (repl. 1980); Vt. Stat. Ann. tit. 12, § 3081 (1973);

The obligations of a garnishee typically are, at most, to notify the principal debtor, to answer the state court's summons, to state whether he owes money or property to the principal debtor and, if so, the amount, and to comply with the writ of garnishment. This Court noted in *Harris* v. *Balk*, 198 U.S. 215, 226-228 (1905),[10] that a garnishee cannot be compelled to reimburse the principal debtor for payment under compulsion of a garnishment proceeding,[11] unless the garnishee negligently failed in his duty to give notice to the principal debtor. The purpose of the notice, the Court remarked, is to give the principal debtor himself the "opportunity to defend the claim made against him in the attachment suit" (*id.* at 227). No further obligation is placed on the garnishee: he is not required to take sides in the underlying litigation and need not file a separate interpleader action to protect himself from inconsistent judgments. As between the garnishee and the principal debtor, the debt is discharged by the garnishee's payment to the court in compliance with the writ. See, *e.g.*, *Agnew* v. *Cronin*, 148 Cal. App. 2d 117, 306 P.2d 527 (1957) (garnishee is liable for failure to notify principal debtor of garnishment; no duty imposed beyond providing notice).

Wash. Rev. Code Ann. § 7.32.300 (1961); W. Va. Code § 38-7-25 (1966); Wis. Stat. Ann. § 812.16(2) (West 1977); Wyo. Stat. Ann. § 1-15-302 (1977).

[10] This portion of the holding in *Harris* v. *Balk*, *supra*, was not affected by *Shaffer* v. *Heitner*, 433 U.S. 186 (1977).

[11] In order to constitute a defense to a claim for reimbursement, this Court stated, the payment must have been made "under a valid judgment against [the garnishee]" (198 U.S. at 226). There is no requirement that the underlying judgment be valid as to the principal debtor.

The court of appeals, relying on 38 C.J.S. *Garnishment* §§ 244 and 311 (1943) and cases cited therein, stated that "a valid judgment against the defendant is essential to the validity of a judgment against the garnishee" (Pet. App. 11a n.5). However, this principle has application only in the context of a defense by the garnishee in the garnishment action, or by the principal debtor in litigation against the plaintiff. See, *e.g.*, *Chiaro* v. *Lemberis*, 28 Ill. App. 2d 164, 171 N.E.2d 81 (1960). It does not apply to the prejudice of a third party stakeholder. Neither the court of appeals nor the relevant sections of C.J.S. cite any case in which this principle has been applied as a basis for imposing a second liability on the garnishee in an action by the principal debtor, at least where the garnishee had notified the principal debtor of the garnishment proceeding.[12] Indeed, 38 C.J.S. *Garnishment* § 293(e)(2) (1943) (footnote omitted) states that "where a garnishee notified defendant to attend and make defense if he had any, a judgment against the garnishee will protect him, although he failed to defend on the ground of irregularity in the garnishment proceedings."

This follows from the status of the garnishee as a stakeholder in the action. The garnishee is summoned to court in the garnishment action and compelled to answer whether he owes money to or holds property of the principal debtor. Upon answer, and

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[12] *Betts* v. *Coltes*, 467 F. Supp. 544 (D. Hawaii 1979), the only case cited by the court of appeals (Pet. App. 11a n.5), actually supports our view. There, the court stated that the principal debtor could recover monies erroneously paid by a garnishee to a judgment creditor *from the creditor*. Only in instances of misuse of process or failure to correct an erroneous garnishment, not relevant here, could the principal debtor recover damages from the garnishee.

if so ordered by the court, the garnishee is required to deposit the money or other property belonging to the principal debtor into the registry of the court. It would be manifestly unfair to require the garnishee to shoulder the burden of litigation on behalf of the principal debtor, where the latter has notice of the proceeding and chooses not to avail himself of the opportunity to appear to defend his interests, and likewise unfair to require the garnishee to pay twice in the event the underlying judgment is found to have a jurisdictional defect not apparent on the face of the process.

The equities of the matter were cogently set forth a century ago in *City of New Bedford*, 20 F. 57 (S.D.N.Y. 1884), a case remarkably similar to this one. There, as here, an employee was sued by a creditor (Blake) in state court, in a proceeding he deemed void for want of personal jurisdiction. The employee "had full actual notice of the suit on the day when it was instituted" (*id.* at 60), but "[i]nstead of assuming the defense of that suit, if he had any defense, he left the [garnishees] to defend as [they] could" (*id.* at 61). After the garnishees had been compelled to pay his debts, the employee repaired to federal court where he sued the garnishees under the admiralty jurisdiction [13] and asked the court "to require the defendants [the garnishees] to pay that part over again" (*id.* at 60-61). The court, even though expressly holding that the underlying judgment was void for want of jurisdiction (*id.* at 60), held in favor of the defendant garnishees (*id.* at 61):

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[13] The employee, a seaman, brought suit by libelling the vessel owned by his employers.

> [H]ere the payment by the defendants has been already made, and made compulsorily under a power which they could not resist. The [employee's] debt to Blake has been thereby extinguished. * * * He has had the full benefit of the defendants' payment of it. These are all accomplished facts; and in the absence of any proved circumstances of hardship to the [employee], there is manifestly no equity in his claim to be paid, in substance, a second time; and such a decree would inflict a manifest wrong upon the defendants.

See *Harris* v. *Balk*, 198 U.S. at 226 ("It ought to be and it is the object of courts to prevent the payment of any debt twice over)." [14] See also *Oppenheimer* v. *Dresdner Bank A.G.*, 50 A.D.2d 434, 377 N.Y.S.2d 625 (1975), aff'd, 41 N.Y.2d 949, 363 N.E.2d 358 (1977); *Savepex Sales Co.* v. *M.S. Kaplan Co.*, 103 Ill. App. 2d 481, 243 N.E.2d 608 (1968); *Agnew* v. *Cronin, supra; Steltzer* v. *Chicago, M. & St. P. Ry.*, 156 Iowa 1, 134 N.W. 573 (1912); cf. *Vanasse* v. *Labrecque*, 381 A.2d 269 (Me. 1977).

We do not challenge the oft-cited proposition (Annot., 49 A.L.R. 1411 (1927) (emphasis added)) that "if the judgment *in a garnishment proceeding* is void, as, for example, where there is no jurisdiction acquired by the court, payment by the garnishee is no

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[14] As this Court commented in *Chicago, R.I. & P. Ry.* v. *Sturm*, 174 U.S. 710, 713 (1899): "How proceedings in garnishment may be availed of in defence [by the garnishee] * * * the practice of the States of the Union is not uniform. But it is obvious and necessary justice that such proceedings should be allowed as a defence in some way." See also *Huron Holding Corp.* v. *Lincoln Mine Operating Co.*, 312 U.S. 183, 189, 194 (1941).

protection to him against a subsequent action by his creditor, or the creditor's assignee, to recover the debt." See, *e.g.*, *Alabama Great Southern R.R.* v. *Chumley*, 92 Ala. 317, 9 So. 286 (1890).[15] It imposes no unreasonable burden on the garnishee to ensure that the garnishment action to which he is a party is proper. Here, for example, there is no doubt that the Alabama court had both subject matter and personal jurisdiction in the garnishment suit by Mrs. Morton against the Air Force; the Air Force is present in Alabama for purposes of suit and has consented to suit by virtue of 42 U.S.C. (Supp. V) 659. It is quite another proposition to require the garnishee to second-guess the jurisdiction of the underlying proceeding, to which he was not a party, where the process served on the garnishee is fully regular on its face.

To be sure, some state courts have stated that garnishees may be held liable for reimbursement to the principal debtor where the underlying judgment was void. See, *e.g.*, *Upper Blue Bench Irrigation Dist.* v. *Continental Nat'l Bank & Trust Co.*, 93 Utah

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[15] In *Chumley*, a Tennessee creditor obtained a valid judgment in Tennessee state court against Chumley, then a resident of Tennessee. After failure of execution, the creditor obtained a writ of garnishment in Tennessee state court against Chumley's employer, the railroad, an Alabama corporation. Since Tennessee then had no provision permitting service of process on out-of-state corporations except with respect to claims or property arising or located in the State, and since the wages owing to Chumley, who by then had moved to Alabama, were deemed to be situated in Alabama, the Tennessee court had no jurisdiction over the railroad in the garnishment action. Decisions following this pattern are easily distinguishable from the instant case, where there is no doubt that the Alabama court had jurisdiction over the Air Force in the garnishment action.

325, 72 P.2d 1048 (1937); *Czesna* v. *Lietuva Loan & Savings Ass'n*, 252 Ill. App. 612 (1929); *Roberts* v. *Hickory Camp Coal & Coke Co.*, 58 W. Va. 276, 52 S.E. 2d (1905); *Louisville & N. R.R.* v. *Nash*, 118 Ala. 477, 23 So. 825 (1897). But these are cases where the principal defendant had been given no actual notice of the action. In this case, by contrast, respondent, the principal debtor, had actual notice of the suit and an opportunity to contest jurisdiction. See page 3, *supra*.[16] Moreover, the state statutes cited above would appear to preclude such liability in most instances.[17] Indeed, the continued vitality of the doc-

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[16] As the dissenting opinion correctly observed (Pet. App. 27a n.4), the question of pre-judgment garnishments (where the garnishee's debt provides the jurisdictional basis for quasi in rem jurisdiction over the principal debtor) presents different issues from that of post-judgment garnishments. See N.Y. Civ. Prac. Law § 5209 (McKinney 1978) (Practice Commentary). In the wake of *Shaffer* v. *Heitner*, *supra*, and *Sniadach* v. *Family Finance Corp.*, 395 U.S. 337 (1969), the question of the effect on garnishees of jurisdictional defects in pre-judgment garnishment actions is of little practical significance. Cases such as *Cole* v. *Randall Park Holding Co.*, 201 Md. 616, 95 A.2d 273 (1953); *Riley* v. *State Bank of De Pere*, 269 N.W. 722 (Wis. 1936); and *Egnatik* v. *Riverview State Bank*, 114 Kan. 105, 216 P. 1100 (1923), are, therefore, not in point.

[17] We have found only one decision, *O'Toole* v. *Helio Products, Inc.*, 17 Ill. App.2d 82, 149 N.E.2d 795 (1958), in which the court expressly considered one of the statutes cited and construed it as not applying where the underlying judgment was void for want of personal jurisdiction over the principal debtor, even though the principal debtor had been given notice. The dearth of reported decisions construing these statutes in situations similar to that in this case—which presents a common fact pattern—suggests that the plain language of the statutes has been followed without need for judicial construction.

trine that subsequent actions based on void judgments are themselves void is also in doubt. In some states under some circumstances, it was thought that a judgment based on an earlier judgment that was subsequently held void was itself automatically nullified, despite effects upon innocent third parties who had relied on it. As the new Restatement (Second) of Judgments makes clear, however, this is no longer the law (if it ever was). "The current doctrine," according to the Restatement, "is that the later judgment remains valid, but a party, upon a showing that the earlier judgment has been nullified and that relief from the later judgment is warranted, may by appropriate proceedings secure such relief." 1 Restatement (Second) of Judgments § 16 comment c 146 (1982). This enables a third party, such as a garnishee, to rely on a facially valid court order, while protecting the right of the defendant in the underlying suit to obtain prospective relief.

This view of the effect of a void judgment on ancillary judgments meshes precisely with the statutory and regulatory scheme of Section 659. The United States, as garnishee, is entitled to treat the state court garnishment writ—assuming it is regular on its face—as valid, and may rely upon it without fear that subsequent courts will conclude that the court issuing the writ erred as to the validity of the underlying judgment. The employee debtor is promptly notified of the garnishment and given an opportunity to undertake "appropriate proceedings [to] secure * * * relief" from the judgment. Under the implementing regulations, the government will not honor a garnishment writ in the event that such steps have been successfully completed. If a court of competent jurisdiction enjoins or suspends the opera-

tion of the garnishment writ, the disbursing agent is instructed not to comply with the garnishment (5 C.F.R. 581.305(a)(5)), and if notice is received that the employee debtor has appealed the underlying judgment, the agent is instructed (unless to do so would be inconsistent with applicable state law) to suspend payment of monies to the plaintiff in the garnishment action (5 C.F.R. 581.305(a)(6)). The employee debtor cannot, however, simply rest on his rights and expect the government, as garnishee, to make him whole after the fact. See *Calhoun* v. *United States*, 557 F.2d 401, 402 (4th Cir.), cert. denied, 434 U.S. 966 (1977).[18]

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[18] In *Calhoun*, a Navy officer sued to recover pay garnished to satisfy alimony and child support obligations, contending that the garnishment writ was void because the court that issued the underlying divorce judgment lacked personal jurisdiction over him. Observing that the divorce judgment was "facially valid," the court of appeals held (557 F.2d at 402) that "[t]he United States was under no duty to contest the judgment * * *. It was Calhoun's obligation to attack the judgment if he wished to avoid the deduction from his pay." See also *Overman* v. *United States*, 563 F.2d 1287 (8th Cir. 1977); *Snapp* v. *United States Postal Service*, 664 F.2d 1329 (5th Cir. 1982); *Cunningham* v. *Department of Navy*, 455 F. Supp. 1370 (D. Conn. 1978); *Popple* v. *United States*, 416 F. Supp. 1227 (W.D. N.Y. 1976) (holding that federal employees cannot sue to enjoin compliance with facially valid garnishment writs under Section 659).

The court below distinguished *Calhoun* on the patently irrelevant ground that its construction of Section 659(a) took place prior to the addition of Section 659(f) in 1977 (Pet. App. 10a). The 1977 amendments left the content of Section 659(a) unchanged (albeit renumbered) as it affects the federal government. As the Senate report accompanying the amendment plainly stated (S. Rep. 1350, 94th Cong., 2d Sess. 3 (1976)): "[i]t is not the purpose of the committee bill to make any major changes in the new child support law. The

Finally, even if currently prevailing state law did place private garnishees at their peril in complying with facially valid writs where the principal debtor was notified but failed to take steps to protect his rights, there is no reason to believe that Congress intended to subject the United States to such contingencies. Not only has the federal government traditionally been immune altogether from garnishment writs, but the administrative and financial burden on the government, by far the nation's largest employer, would far exceed that of any private garnishee. It is not likely that Congress would assume the substantial adverse consequences of such a holding without debate, reflection or explanation. And even if such an interpretation were possible under Section 659 as originally enacted, it is no longer credible under the 1977 amendment, as we show below.[19]

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bill would make modifications, consistent with the original congressional intent, to clarify questions that have been raised [and] to provide for administrative improvement." See also Br. in Opp. 11. In any event, Section 659(f), which was added by the 1977 amendments, expressly *immunizes* the government from certain liability; it creates no new source of liability. We fail to understand how the addition of Section 659(f) could undermine the *Calhoun* court's conclusion that Section 659(a) did not itself give rise to liability.

[19] There is no merit in the court of appeals' suggestion (Pet. App. 8a) that alimony or child support orders entered by a court without personal jurisdiction over the defendant do not fall within Section 659(a), which waives sovereign immunity for garnishment writs for the enforcement of "legal obligations" to furnish child support or pay alimony. As the implementing regulations provide (5 C.F.R. 581.102(g)), a "legal obligation" in this context is one that is "enforceable under appropriate State or local law." Here, the Alabama court enforced respondent's obligations by issuing the writ. Furthermore, the court of appeals' interpretation of the

2. Section 659(f), added by amendment in 1977,[20] unequivocally provides that neither the government nor its disbursing officers may be held liable for a payment made "pursuant to legal process regular on its face, if such payment is made in accordance with this section and the regulations issued to carry out this section." In the present case, the court of appeals did not dispute that the garnishment writ was "regular on its face," but held that the writ was not "legal process" within the meaning of the garnishment statute. Section 662(e)(1) defines "legal process" to require issuance by a "court of competent jurisdiction," and the court of appeals held that a "court of competent jurisdiction" is one that has personal, as well as subject matter, jurisdiction. Accordingly, a garnishment writ issued by a court lacking personal jurisdiction is not "legal process." The court thus concluded that when the government honors such a writ despite notice of "a claim of substantial jurisdictional irregularity," the government is not protected from liability by Section 659(f).

As an initial matter, we are puzzled by the court of appeals' conclusion (Pet. App. 8a) that the term "court of competent jurisdiction"—whatever its meaning—refers to the court that issued the underlying judgment, rather than to the court that issued

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phrase "legal obligation" would seemingly exclude judgments suffering any legal defect. And even if limited to judgments held to be void, this approach would be subject to all of the objections we have lodged to the court's holding concerning "legal process." See subpart A.2, *infra*.

[20] As pointed out in note 18, *supra*, the legislative history shows that the 1977 amendments were intended to clarify, not substantively to change, the prior Section 659.

the writ of garnishment.[21] These need not be the same, and even if they happen to be the same, as in this case, the question of personal jurisdiction in the two actions is quite likely to be different.[22] For example, if a divorce decree had been procured by Mrs. Morton in Virginia, prior to moving to Alabama, and respondent had subsequently defaulted on his sup-

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[21] The federal cases cited by the court of appeals in support of its view (Pet. App. 8a n.4) involved pre-judgment attachments where the plaintiffs sought to obtain quasi in rem jurisdiction on the basis of the attachment.

[22] Garnishment actions are commenced under different forms of action in different states, but it is long established that, for jurisdictional purposes, a post-judgment garnishment action "is a new suit to which the creditor is plaintiff and the garnishee, the defendant." 2 R. Shinn, *Attachment and Garnishment* §§ 469, 470, at 836-838 (1896); see *United States ex rel. Ordmann* v. *Cummings*, 85 F.2d 273, 275 (D.C. Cir. 1936). Although the principal debtor (the defendant in the underlying proceeding) has the right to appear and defend as a party, the jurisdiction of the garnishment court does not depend upon personal jurisdiction over the principal debtor. *Shaffer* v. *Heitner*, 433 U.S. 186, 210-211 n.36 (1977). The general rule is that the plaintiff may bring the garnishment action anywhere that the principal debtor could have brought suit to collect his debt from the garnishee. *Orrox Corp.* v. *Orr*, 364 So.2d 1170, 1171 (Ala. 1978); *Dorr-Oliver, Inc.* v. *Willett Associates*, 153 Conn. 588, 219 A.2d 718 (1966). Of course, both under the traditional law of garnishment (see *Harris* v. *Balk*, 198 U.S. at 227) and under evolving principles of due process (see, *e.g.*, *Community Thrift Club, Inc.* v. *Dearborn Acceptance Corp.*, 487 F. Supp. 877 (N.D. Ill. 1980)), the principal debtor must have notice of the garnishment action, at least where the underlying judgment was by default or confession, and in the absence of adequate alternative procedural safeguards. See *Betts* v. *Coltes*, 467 F. Supp. 541 (D. Hawaii 1979).

port obligations, Mrs. Morton could have filed a garnishment action against the Air Force in Alabama, identical in all material respects to the garnishment action here. In such a hypothetical, it would be clear that the term "legal process * * * issued by * * * a court of competent jurisdiction" would refer to the Alabama proceeding that resulted in issuance of the writ—not to the prior Virginia divorce proceeding. It would furthermore be clear that the "competence" of the Alabama court would not depend upon whether it correctly held that the hypothetical prior Virginia judgment was entitled to full faith and credit. Here, as in the hypothetical, there is no doubt concerning the jurisdiction—both personal and subject matter—of the Alabama court in the garnishment action brought by Mrs. Morton against the Air Force. The only question concerns the jurisdiction of the Alabama court in the underlying divorce action brought by Mrs. Morton against her husband. But that is a markedly different inquiry not relevant to the "competence" of the garnishment court to issue the writ.

Even overcoming this initial problem, and assuming arguendo that the invalidity of the underlying judgment somehow affects the competence of the garnishment court, the court of appeals' interpretation remains difficult to square with the statute. Section 659(f) provides that the government is immune from liability for honoring "legal process regular on its face." The term "legal process" is defined by statute (42 U.S.C. (Supp. V) 662(e)) to include "any writ, order, summons, or other similar process in the nature of garnishment, which * * * is issued by * * * a court of competent jurisdiction within any State, territory, or possession of the United

States." The terms "competence" or "competent jurisdiction" are not defined but, contrary to the court of appeals' apparent assumption, such terms are often used to refer to subject matter jurisdiction alone. See, *e.g.*, *Pennoyer* v. *Neff*, 95 U.S. (5 Otto.) 714, 733 (1877) (emphasis added) ("To give such proceedings any validity, there must be a tribunal competent by its constitution—that is, by the law of its creation—to pass upon the subject-matter of the suit; *and*, if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the State, or his voluntary appearance"); 1 Restatement (Second) of Judgments §§ 27, 28 (1982) ("The term 'subject matter jurisdiction' * * * is also sometimes referred to as 'competence' or 'competency.'"); Restatement (Second) of Conflict of Laws § 92 (1971); Restatement of Judgments § 7 (1942); 18 U.S.C. 2510(9) ("[j]udge of competent jurisdiction" means judge with authority to enter a certain type of order). In other contexts, the terms have been used to refer to personal as well as subject matter jurisdiction. See, *e.g.*, *Arizona* v. *California*, No. 8, Orig. (Mar. 30, 1983), slip op. 13; *Ex parte Davis*, 66 Okla. Crim. 271, 285, 91 P.2d 799, 807 (1939).[23]

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[23] The court of appeals noted (Pet. App. 9a) that respondent relied for his interpretation of the term "court of competent jurisdiction" on *Robinson* v. *Attapulgus Clay Co.*, 55 Ga. App. 141, 189 S.E. 555 (1937), and *State* v. *Long*, 44 Del. 251, 59 A.2d 545 (Ct. Gen. Sess. 1948), rev'd on other grounds, 44 Del. 262, 65 A.2d 489 (Sup. Ct. 1949). The statements relied on in both decisions are dicta; *Robinson* did not involve interpretation of the term "competent jurisdiction," and in *Long* the controverted question was whether the court had jurisdiction over a *res*—not over the parties.

In this case, the context clearly indicates that "court of competent jurisdiction" cannot refer to an issue—such as personal jurisdiction—that is not determinable from the face of the writ. The statute expressly immunizes the government from liability for honoring "legal process regular on its face" (42 U.S.C. (Supp. V) 659(f)). The phrase must be interpreted as a whole. It does not embody two separate and independent concepts. Whether a writ is "legal process" must be determinable on the face of the writ; otherwise, the qualification "on its face" would be rendered meaningless. Interpreting the phrase "court of competent jurisdiction" to refer in this context only to subject matter jurisdiction harmonizes Section 659(f)'s reference to "legal process regular on its face" with Section 662(e)(1)'s definition of "legal process." Unlike the lack of personal jurisdiction, the absence of subject matter jurisdiction is almost always detectable from the face of the process.

The court of appeals' conclusion perfectly illustrates the interpretative problem created by viewing the two parts of the phrase in isolation. If the term "legal process" is understood to be limited to process issued by a court with personal, as well as subject matter, jurisdiction—a question not generally determinable on the face of the writ[24]—the government is not immune from suit for complying with process that is "regular on its face," as the plain language of Section 659(f) provides. Instead, the government would be required to look beyond the facial validity of a garnishment writ and determine whether the

[24] This is especially true where the alleged jurisdictional defect is in the underlying proceeding rather than in the garnishment itself.

state court that issued the underlying judgment had personal jurisdiction over the defendant. The court of appeals' construction thus effectively nullifies the language "regular on its face" and renders Section 659(f) internally inconsistent. See *Philbrook* v. *Glodgett*, 421 U.S. 707, 713 (1975); *Chemehuevi Tribe of Indians* v. *FPC*, 420 U.S. 395, 403 (1975); *Clark* v. *Uebersee Finanz-Korporation*, A.G., 332 U.S. 480, 488-489 (1947).[25]

Apparently recognizing that its interpretation would deprive the government of its statutory protection for honoring writs that are regular on their face, the court of appeals declared (Pet. App. 17a (footnotes omitted)) that "the immunity provisions of the garnishment statute permit the Government, where the process document is regular on its face, to make payment without liability on a presumption that the underlying judgment is valid, but that such a presumption is rebuttable by a showing that the Government had notice of a substantial claim of jurisdictional irregularity." Whatever the merit of this rule—and we will show that it is unworkable

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[25] Respondent defends the court of appeals' interpretation by suggesting that Congress "intended to insulate the government from suit when they honored a 'voidable' judgment as opposed to a 'void' judgment" (Br. in Opp. 12). This position, however, finds no support in the language or legislative history of the statute. We do not doubt that Congress could have drawn the line between "void" and "voidable" judgments; however, the line actually drawn is between legal process "regular" or irregular "on its face." And since this determination is one to be made by federal disbursing agents, who ordinarily lack either the information or the legal training that would be required to distinguish between void and voidable judgments, it is easy to understand why Congress decided as it did.

(see pages 40-42, *infra*)—it is clearly the court's own invention. The court did not purport to extract it from any provision of the federal garnishment statute, from the legislative history of the statute, or indeed from any other authority.

This interpretation cannot be reconciled either with the plain meaning of Section 659(f) or with the court of appeals' own reading of the term "legal process." Section 659(f) unambiguously shields the government from liability whenever it honors a state garnishment writ that is "regular on its face"; it carves out no exception for cases where the government has notice of potential challenges to the state court's personal jurisdiction. Notice of such potential challenges would be equally immaterial if the court of appeals' interpretation of the phrase "court of competent jurisdiction" were accepted. If a court without personal jurisdiction is not a "court of competent jurisdiction," as the decision below held (Pet. App. 8a-11a), then a garnishment writ issued by such a court would not be "legal process" within the meaning of the immunity provision and that provision could not apply. Thus, under either construction, whether the government had notice of the jurisdictional defect would not seem to matter.

The court of appeals' nonliteral interpretation of Section 659(f) is especially inappropriate to a statute waiving sovereign immunity. Such a waiver must be "unequivocally expressed" (*Lehman* v. *Nakshian*, 453 U.S. 156, 160 (1981); *United States* v. *King*, 395 U.S. 1, 4 (1969)); the " 'limitations and conditions upon which the Government consents to be sued must be strictly observed and exceptions thereto are not to be implied' " (*Lehman*, 453 U.S. at 161, quoting *Soriano* v. *United States*, 352 U.S. 270, 276

(1957)). The court's implication of a burden on the government to undertake legal investigation and litigation whenever the employee defendant gives notice of a latent jurisdictional defect in the proceedings underlying the garnishment writ vastly expands the liabilities and obligations of the government beyond anything that Congress expressly imposed or could reasonably have intended when it waived sovereign immunity.

It is essentially for these reasons that our interpretation of the phrase "legal process regular on its face" has been adopted by two courts of appeals (*Rush* v. *United States Agency for International Development*, 706 F.2d 1229 (D.C. Cir. 1983) (table), cert. denied, No. 83-382 (Jan. 9, 1984) (Pet. App. 104a-107a); *Jizmerjian* v. *Department of Air Force*, 457 F. Supp. 820 (D.S.C. 1978), aff'd, 607 F.2d 1001 (4th Cir. 1979), cert. denied, 444 U.S. 1082 (1980)) and the Comptroller General (*In re Technical Sergeant Harry E. Mathews, USAF*, File No. B-203668 (Comp. Gen. Feb. 2, 1982) (Pet. App. 109a-111a). In *Rush*, a federal employee sued for recovery of garnished wages and injunctive relief, claiming among other things that the state court that ordered him to pay child support lacked personal jurisdiction. Noting that the government is immune from suit for payments made pursuant to a garnishment writ that is "regular on its face," the District of Columbia Circuit stated (Pet. App. 107a):

> In the present case, Rush has not claimed that the garnishment order was facially invalid or that AID violated statutory requirements or applicable regulations. Thus, at least to the extent that Rush seeks reimbursement of funds previously garnished, he is barred by the stat-

> ute from litigating those claims against AID or its administrator.

The court did not inquire whether the government had notice of any substantial jurisdictional irregularities, as the decision below would require. Accord, *Jizmerjian* v. *Department of Air Force, supra.*

In *Mathews*, the Comptroller General considered whether there is authority to reimburse an Air Force sergeant for pay garnished under a facially valid order, where the order had subsequently been set aside for want of personal jurisdiction (Pet. App. 110a). Relying on Section 659(f), the Comptroller General concluded that there is no authority for reimbursement under those circumstances. The opinion stated (Pet. App. 110a-111a):

> The inquiry into whether an order is valid on its face is an examination of the procedural aspects of the legal process involved, not the substantive issues. Whether a process conforms or is regular "on its face" means just that. Facial validity of a writ need not be determined "upon the basis of scrutiny by a trained legal mind," nor is facial validity to be judged in light of facts outside the writ's provisions which the person executing the writ may know. *Aetna Insurance Co.* v. *Blumenthal*, 29 A.2d 751, 754 (Conn. 1943).

3. The court of appeals defended its interpretation of Section 659 by suggesting that a contrary holding would violate respondent's due process rights.[20] There

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[20] The court stated (Pet. App. 17a): "To hold otherwise and to require (as would the dissent) Colonel Morton, a resident of Alaska, to proceed in the Alabama state court against Mrs. Morton would, in effect, render [42 U.S.C. 659] violative of constitutional due process."

is no basis for this suggestion. The personal jurisdiction requirement admittedly protects an individual liberty interest recognized by the Constitution, but it does not violate due process to require a civil defendant to take appropriate steps to invoke this protection (*Insurance Corp. of Ireland, Ltd.* v. *Compagnie Des Bauxites de Guinee*, 456 U.S. 694, 702-705 (1982)) or to permit third parties to act in reliance on a facially valid judgment until the defendant has done so.

Here, respondent was given actual notice of his wife's suit against him in Alabama (Pet. App. 89a) and also of the garnishment action against his employer, the Air Force (*id.* at 91a). He could have entered a limited appearance for the purpose of challenging the Alabama court's personal jurisdiction or, having risked a default judgment in the underlying litigation, could have challenged the judgment on jurisdictional grounds in the garnishment action or other collateral proceeding (*Insurance Corp. of Ireland*, 456 U.S. at 706). The very purpose of the notice requirement recognized in state law and by federal statute and regulation is to enable the employee debtor to take such steps as he deems appropriate to protect his interests. Having neglected to assert his rights, as he had the opportunity to do, respondent can hardly claim now that due process would be infringed if he were denied the opportunity to shift his losses to his employer.

Indeed, fundamental considerations of fairness largely cut the other way. To require the garnishee —a mere stakeholder—to shoulder the cost and burden of litigating the issue of personal jurisdiction, and to impose the penalty of double payment on the garnishee if a court subsequently holds the original

state court judgment void, is not self-evidently just. Nor does it seem entirely fair for the courts below to have adjudicated the rights of Mrs. Morton and the children without their participation in the litigation. The conflicting interests of creditor, debtor, and garnishee are indeed difficult to balance in multi-state situations such as this, but Congress's solution—to require the government, as garnishee, to give notice to the debtor but to comply with facially valid state court decrees until they are set aside—is a reasonable accommodation that does not offend "traditional notions of fair play and substantial justice." *Insurance Corp. of Ireland*, 456 U.S. at 703, quoting *International Shoe Co.* v. *State of Washington*, 326 U.S. 310, 316 (1945), quoting *Milliken* v. *Meyer*, 311 U.S. 457, 463 (1940).

B. The Court Of Appeals' Decision Disregards Regulations Authorized By Congress To Implement The Statute

Congress specifically authorized the issuance of regulations that would govern the scope of liability of the United States and its disbursing agents for payments pursuant to Section 659. 42 U.S.C. (Supp. V) 661. Section 659(f) provides that the regulations will have the following effect (emphasis added)):

> Neither the United States, any disbursing officer, nor governmental entity shall be liable with respect to any payment made from moneys due or payable from the United States to any individual pursuant to legal process regular on its face, *if such payment is made in accordance with this section and the regulations issued to carry out this section.*

Under this "explicit delegation of substantive authority" (*Schweiker* v. *Gray Panthers*, 453 U.S. 34,

44 (1981)), the regulations issued by the Office of Personnel Management[27] implementing Section 659 (5 C.F.R. Pt. 581) are " 'entitled to more than mere deference or weight.' " They are "entitled to 'legislative effect.' " 453 U.S. at 44 (quoting *Batterton* v. *Francis*, 432 U.S. 416, 425, 426 (1977)). The regulations set out in great detail the requirements and procedures for honoring writs of garnishment. If payments are made in accordance with the regulations, neither the government nor the disbursing officer may be held liable for reimbursement.

The regulations remove all discretion from disbursing officers to "refuse[] to honor the writs of garnishment," as the court of appeals would require (Pet. App. 19a n.14), except in certain circumstances enumerated in 5 C.F.R. 581.305(a). Moreover, the regulations make clear that the government will not —as the court of appeals would seemingly require— represent the interests of the employee defendant in the underlying proceeding. 5 C.F.R. 581.302(b)(2).

5 C.F.R. 581.301 provides that upon proper service of process, the employing agency shall "withhold payment of [garnishable sums] for the amount necessary to permit compliance with the legal process." 5 C.F.R. 581.302(a) requires, inter alia, that the government give the employee defendant written notice of service, including a copy of the legal process, as soon as possible, and not later than 15 days after service. 5 C.F.R. 581.302(b) authorizes the govern-

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[27] The President delegated authority to issue regulations implementing Section 659 to the Office of Personnel Management. Exec. Order No. 12105, 43 Fed. Reg. 59465 (1978). Prior to issuance, the regulations were published for public notice and comment. See 44 Fed. Reg. 60301-60306 (1979); see also 48 Fed. Reg. 811-812 (1983).

ment to inform the employee that "the United States does not represent the interests of the obligor [*i.e.*, employee] in the pending legal proceedings," that "the obligor may wish to consult legal counsel regarding defenses to the legal process," and that members of the uniformed services may wish to avail themselves of certain provisions of the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. App. §§ 520, 521, and 523 (relating, *e.g.*, to stays of proceedings where military service affects their conduct). 5 C.F.R. 581.305(a) as amended by 48 Fed. Reg. 26280 (1983) explicitly states:

> The governmental entity shall comply with legal process, except where the process cannot be complied with because:
>
> (1) It does not, on its face, conform to the laws of the jurisdiction from which it was issued;
>
> (2) The legal process would require the withholding of funds not deemed moneys due from, or payable by, the United States as remuneration for employment;
>
> (3) The legal process is not brought to enforce legal obligation(s) for alimony and/or child support;
>
> (4) It does not comply with the mandatory provisions of this part;
>
> (5) An order of a court of competent jurisdiction enjoining or suspending the operation of the legal process has been served on the governmental entity; or
>
> (6) Where notice is received that the obligor has appealed either the legal process or the underlying alimony and/or child support order, payment of moneys subject to the legal process shall be suspended until the governmental entity is ordered by a court, or other authority, to re-

> sume payments. However, no suspension action shall be taken where the applicable law of the jurisdiction wherein the appeal is filed requires compliance with the legal process while an appeal is pending.

The regulations thus do not permit disbursing officers to refuse to honor a writ because of doubts about personal jurisdiction over the employee defendant in the underlying divorce proceeding. This has recently been made even more explicit. See 5 C.F.R. 581.305(a)(6)(f), as added by 48 Fed. Reg. 26280 (1983):

> If a governmental entity receives legal process which, on its face, appears to conform to the laws of the jurisdiction from which it was issued, the entity shall not be required to ascertain whether the authority which issued the legal process had obtained personal jurisdiction over the obligor.

There can be no dispute that these regulations reflect a reasonable implementation of the statute. As regulations explicitly authorized by Congress, they are entitled to more than the usual deference accorded interpretations by the agency entrusted with implementation of a statute. Here, the court of appeals virtually ignored them.[28] The federal disbursing agents in this case complied fully with the regulations. They and the government are therefore immune from suit for reimbursement of the payments made to the Alabama court from respondent's salary.

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[28] The court of appeals quoted the implementing regulations to establish that "legal process" must be issued by a "court of competent jurisdiction" (Pet. App. 7a, 9a; see also *id.* at 8a), but did not otherwise allude to them. Cf. *id.* at 43a-45a (Nies, J., dissenting).

C. The Court of Appeals' Decision Is Contrary To Congressional Intent

The court of appeals' interpretation of the garnishment statute will frustrate Congress's expressed intent. The garnishment statute, together with other related measures, was enacted "to assure an effective program of child support." S. Rep. 1356, 93d Cong., 2d Sess. 2 (1974). The Senate Report stated (*id.* at 42-43) that "[t]he problem of welfare in the United States is, to a considerable extent, a problem of the non-support of children by their absent parents * * *. The Committee believes that all children have the right to receive support from their fathers. * * * [E]nforcement of child support obligations is not an area of jurisprudence about which this country can be proud."

Before the federal garnishment statute was enacted, there were two chief ways to enforce a child support or alimony award against a federal employee or member of the armed services living in another state. First, the non-employee spouse could seek to enforce the award in the courts of the employee's state. This procedure was unsatisfactory for several reasons. It was costly for the spouse—who was often without means of support—to litigate in a distant state. The employee frequently had no assets to attach other than his federal salary, which could not be garnished. An employee delinquent on his support obligations, who might have moved in the first place to escape payment, could simply move again. And because states are constitutionally required to extend full faith and credit to support orders only if they are final under the law of the issuing state (*Sistare* v. *Sistare*, 218 U.S. 1 (1910)), it was often neces-

sary for the spouse to bring repeated enforcement actions as installments became due.[29]

The second available procedure, under the Uniform Reciprocal Enforcement of Support Act (URESA) (9 U.L.A. 643 (1979)), was drafted in 1950 in order to solve these and other problems. URESA or compatible legislation has now been adopted by every state.[30] Under URESA, the dependent spouse and children may file a complaint in their state of residence (§§ 13, 14). If the court finds that the complaint "sets forth facts from which it may be determined that the employed spouse owes a duty of support," the court sends the complaint to the appropriate court in his state (§ 17), where the local prosecutor represents the dependent spouse and children (§ 18) and seeks the issuance of a support order (§ 23).

Despite hopes, this procedure also proved ineffective, as Congress has recognized. The Senate committee that recommended enactment of Section 659 observed (S. Rep. 1356, 93d Cong., 2d Sess. 43 (1974)): "Thousands of unserved child support warrants pile up in many jurisdictions and often traffic cases have a higher priority." The committee noted (*id.* at 43-44) that the former wives and children of many affluent or middle-class fathers were

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[29] See Note, *Counterclaims and Defenses under the Uniform Reciprocal Enforcement of Support Act*, 15 Ga. L. Rev. 143, 144 (1980) (hereinafter cited as Note, *Counterclaims and Defenses*); Note, *Interstate Enforcement of Support Obligations Through Long Arm Statutes and URESA*, 18 J. Family Law 537 (1979-1980).

[30] See Note, *Counterclaims and Defenses*, *supra*, at 145 n.11 (collecting statutes). New York, which has not adopted URESA, has a similar, compatible law (N.Y. Dom. Rel. Law §§ 30-43 (McKinney 1977)).

forced to live on public assistance because of the lack of effective procedures for enforcing support awards, and the committee listed as among the principal flaws in procedures then available "the statutory barrier to collecting from military personnel and Federal employees, and the low priority given child support investigations by the understaffed district attorney's offices" (*id.* at 44; see also 120 Cong. Rec. 40323-40324 (1974)). During the House debates on the garnishment statute, Representative Ullman, the floor sponsor, made much the same point, stating (120 Cong. Rec. 41810 (1974): "[O]ur biggest problem in this whole area is that prosecutors fail to prosecute [under URESA] because they have more important things to do. We just simply have not even gotten a start on prosecuting these cases."

Congress also recognized the special problems posed by delinquent husbands who are federal or military retirees. A House report on a predecessor garnishment bill noted (H.R. Rep. 481, 92d Cong., 1st Sess. 17 (1971)) that suits to enforce retirees' support obligations were "frequently thwarted by a retiree pulling up stakes in the state in which he is being sued and moving to another state where legal action must be commenced again." Recommending the waiver of sovereign immunity for certain garnishment writs, the committee stated (*id.* at 18):

> We recognize this is a drastic departure from anything we have had in the past; but we believe it is wrong for the United States to protect retired and retainer pay while the military retiree can, for practical purposes, ignore court orders.
>
> * * * * *
>
> We recognize that the military retiree, because of the frequency of moves during the time spent

> on active duty, may have less roots in a particular community than his civilian counterpart.

The federal garnishment statute was designed to remedy many of these problems. It permits the garnishment of federal pay to enforce alimony and child support obligations "in like manner and to the same extent as if the United States * * * were a private person" (42 U.S.C. (Supp. V) 659(a)). This enables a dependent spouse or child to attach an asset that cannot easily be concealed, and it prevents a federal employee or retiree from evading payment by changing his residence. The government is not drawn into marital disputes and is spared undue administrative expense, because it is immune from liability for honoring "legal process regular on its face, if such payment is made in accordance with [the garnishment statute] and the regulations issued to carry out [that statute]" (42 U.S.C. (Supp. V) 659(f)). At the same time, the rights of employees and retirees are protected because they are promptly notified when the writ is served (42 U.S.C. (Supp. V) 659(d)) and may then take whatever steps are available to any other similarly situated debtor under the laws of the issuing state. See 120 Cong. Rec. 41810 (1974) (remarks of Rep. Ullman).

The court of appeals' decision is in conflict with this scheme and frustrates Congress's clear intent concerning enforcement of the alimony and child support obligations of federal and military employees and retirees.[21] It also creates an unmanageable bur-

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[21] The decision, if not reversed, might also jeopardize the enforceability of support orders now exempted from restrictions on garnishment under 15 U.S.C. 1673, which uses the term "issued by a court of competent jurisdiction" in much the same way as it is used in Section 659.

den for federal disbursing officers by forcing them to make complex legal determinations on limited information, with the risk of being penalized by double payment if they err. In many instances, it draws the federal government into litigation in a posture adverse to that of the dependent spouses and children whom Congress intended to assist.

The magnitude of the administrative burden—and potential liability—imposed by the court of appeals' construction of Section 659 is immense, in light of the large numbers of federal employees and retirees, especially military personnel.[32] Under the court's interpretation of the statute, the government would be liable for reimbursement if it honored a facially valid garnishment writ after having received "notice of a substantial claim of jurisdictional irregularity" (Pet. App. 17a). Indeed, the court reserved decision on the question whether notice of a mere "nonfrivolous claim" would not also suffice (*id.* at 17a n.12).

Under so loose a standard, a large number of the federal employees whose salaries are garnished can be predicted to attempt to avoid payment by asserting alleged jurisdictional defects. Especially in cases involving servicemen, who, as Congress recognized (H.R. Rep. 481, 92d Cong., 1st Sess. 18 (1971)), are frequently transferred, asserting a colorable claim of lack of personal jurisdiction would not be difficult. As Judge Nies noted in dissent (Pet. App. 42a-43a), "[t]he majority's test of 'notice of substantial irregularity' means no more, on the basis of the facts here, than that an employee must tell his

[32] We have been informed that more than 14,000 garnishment writs are received each year with respect to military personnel alone.

pay officer or supervisor that he was not domiciled in the state asserting jurisdiction over him."

Determining whether such claims are "substantial" or "nonfrivolous" is a task beyond the capabilities of federal disbursing officers. In the first place, there is no satisfactory way for disbursing officers to ascertain the relevant facts. If they rely on employees' allegations, employees will have little trouble establishing "substantial" claims. On the other hand, disbursing officers have no readily apparent means of engaging in independent factfinding. That presumably is why Congress provided protection for compliance with legal process "regular on its face"; it is not practical to expect disbursing officers to uncover latent defects in court orders.

Even if the facts in a particular instance are known and undisputed, the disbursing officer would often face additional hurdles of legal interpretation. Evaluating jurisdictional claims would be extremely time-consuming and would require considerable legal skill. Questions of personal jurisdiction are often difficult, and cases involving military personnel are likely to explore the outer reaches of the states' power. Moreover, the court of appeals' decision holds the government to an extremely high standard. The government may not safely rely upon a state court's determination that personal jurisdiction was present. Instead, the government must decide whether the state court erred, or at least whether a substantial or nonfrivolous claim of error has been asserted—and is subject to liability if a federal court later holds the state court's jurisdictional ruling incorrect.

The court of appeals' opinion is vague on the appropriate course for the government to take in cases where the disbursing officer determines that the per-

sonal jurisdiction of the state court that rendered the underlying judgment is in doubt. In fact, each of the potential alternatives is either unacceptable or inconsistent with Congress's purposes in subjecting federal salaries to garnishment for alimony or child support.

The court of appeals suggested in a footnote (Pet. App. 19a n.14) that the government should simply "refuse[] to honor" the garnishment writ if its validity is in doubt. Such a course would, however, deprive the employee's spouse and children of any expeditious means for challenging the disbursing officer's (possibly erroneous) conclusion that the state court judgment may be void. The court of appeals sanguinely observed that the spouse's interests would still be "protected" because she could invoke the procedures of URESA (*ibid.*). But Congress enacted Section 659 precisely to cure the documented inadequacies of the URESA remedy (see pages 38-40 *supra*). To relegate dependent spouses and children to "protections" found inadequate by Congress, in all cases raising "substantial" claims of jurisdictional defects, cannot be deemed consistent with congressional intent. In addition, such a course—if it is available at all[33]—would provoke needless friction between the federal government and state courts (see Pet. App. 25a, 47a-52a (Nies, J., dissenting)) and could lead to contempt citations against disbursing officers or default judgments against the United States. See, *e.g.*, Ala. Code § 6-6-457 (1977) ("Pro-

[33] A state court order is, after all, binding legal process. Accordingly, Judge Nies may be correct (Pet. App. 25a) that "[t]he United States could no more 'refuse to honor' the writ summoning the Government to the Alabama court than it could 'refuse to honor' the summons by the Court of Claims."

ceedings on failure to appear and answer") (Pet. App. 59a).

The more likely alternative is for the government to take the steps set out by regulation for instances in which it cannot honor the writ. 5 C.F.R. 581.305(b). In such instances (listed at 5 C.F.R. 581.305(a)), the federal agency is instructed to "respond directly to the [state] court, or other authority, setting forth its objections to compliance with the legal process," and to "inform the garnishor, or the garnishor's representative, that the legal process will not be honored." 5 C.F.R. 581.305(b).[34] As contemplated by the regulation, the consequence of this procedure may well be litigation between the United States and the spouse and children. This would place the United States in the position of litigating an issue in which it has no direct interest, on behalf of an employee who failed to assert his own rights, against the intended beneficiaries of the garnishment statute, the needy spouse and children.[35] It is difficult to believe that Congress intended such a perverse result.

A final alternative that may be available is for the government to file an interpleader action in federal court under 28 U.S.C. 1335. See *Texaco, Inc.* v. *LeFevre*, 610 S.W.2d 173 (Tex. Civ. App. 1980). Such a course would, we believe, obviate the possibil-

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[34] This procedure would appear to be the equivalent of an "answer" or "return" under state law, and would probably be treated as such.

[35] The other instances in which the government might be compelled to litigate are inevitable, in that they involve issues of relevance to the government in the garnishment proceeding itself. See 5 C.F.R. 581.305(a). Here, federal involvement in the litigation is far more troublesome, since the government would be forced to support one side in a domestic conflict where the issues are directly pertinent only to the parties involved.

ity of double liability on the government. Little else commends the procedure. The spouse and children would be compelled to undergo litigation in federal court, which they can ill afford, and would be required to await receipt of their support and alimony payments until after the court renders judgment. See 28 U.S.C. 1335 (the plaintiff in interpleader must "deposit [] such money or property * * * into the registry of the court, there to abide the judgment of the court"). The corresponding advantage of this procedure to the employee debtor is likewise slim, since he may be called upon to litigate in the spouse's state (see 28 U.S.C. 1397)—the very result he is (presumably) seeking to avoid. And the forum for resolution of the conflict would be shifted from the state to the federal courts, which are less appropriate tribunals for resolving matters of domestic relations. See *Sosna* v. *Iowa*, 419 U.S. 393, 404 (1975); *Barber* v. *Barber*, 62 U.S. (21 How.) 582, 584 (1859). It is surely inconsistent with principles of comity and federalism to multiply the instances in which the lower federal courts are charged with second-guessing the decisions of state courts on matters of the state courts' own jurisdiction, especially since the state courts themselves are adequate and available to provide a remedy.

None of these alternatives is consistent with the purpose of enacting Section 659, which was to create a prompt, straightforward, and inexpensive means for spouses and children to obtain enforcement of support obligations. Congress did not contemplate the additional hurdles erected by the court of appeals. As stated in a colloquy between Representatives Ullman and St. Germain during the floor debate on enactment of Section 659 (120 Cong. Rec. 41810 (1974)):

> MR. ST GERMAIN: Essentially, the mother or the wife goes into the State court and gets a judgment, and then proceeds on the judgment, on the execution of same, and proceeds with the garnishment: is that not correct?
>
> MR. ULLMAN: The gentleman is correct.
>
> MR. ST GERMAIN: And there are no other conditions precedent?
>
> MR. ULLMAN: The garnishment is on the basis of the court order or decision. * * *

Congress thus intended the federal government to proceed with garnishment "on the basis of the [state] court order or decision" alone—not to undertake factual investigation and legal analysis, not to refuse to honor a facially valid writ, not to litigate against the spouse and children in state court, and not to involve the spouse and children in interpleader actions in federal court while withholding payments.

In sum, considerations of statutory language, agency interpretation, fiscal prudence, administrative efficiency, and redress for the needy class of spouses and children of federal employees all point in the same direction. The court of appeals' interpretation of Section 659 should be rejected.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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APPENDIX

1. 42 U.S.C. (Supp. V) 659 provides:

(a) United States and District of Columbia to be subject to legal process

Notwithstanding any other provision of law, effective January 1, 1975, moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States or the District of Columbia (including any agency, subdivision, or instrumentality thereof) to any individual, including members of the armed services, shall be subject, in like manner and to the same extent as if the United States or the District of Columbia were a private person, to legal process brought for the enforcement, against such individual of his legal obligations to provide child support or make alimony payments.

* * * * *

(d) Notice

Whenever any person, who is designated by law or regulation to accept service of process to which the United States is subject under this section, is effectively served with any such process or with interrogatories relating to an individual's child support or alimony payment obligations, such person shall respond thereto within thirty days (or within such longer period as may be prescribed by applicable State law) after the date effective service thereof is made, and shall, as soon as possible but not later than fifteen days after the date effective service is so made of any such process, send written notice that such process has been so served (together with a copy

thereof) to the individual whose moneys are affected thereby at his duty station or last-known home address.

* * * * *

(f) Non-liability of United States, disbursing officers, and governmental entities with respect to payments

Neither the United States, any disbursing officer, nor governmental entity shall be liable with respect to any payment made from moneys due or payable from the United States to any individual pursuant to legal process regular on its face, if such payment is made in accordance with this section and the regulations issued to carry out this section.

42 U.S.C. (Supp. V) 661(a) provides:

(a) Authority to promulgate

Authority to promulgate regulations for the implementation of the provisions of section 659 of this title shall, insofar as the provisions of such section are applicable to moneys due from (or payable by)—

(1) the executive branch of the Government (including in such branch, for the purposes of this subsection, the territories and possessions of the United States, the United States Postal Service, the Postal Rate Commission, any wholly owned Federal corporation created by an Act of Congress, and the government of the District of Columbia), be vested in the President (or his designee).

(2) the legislative branch of the Government, be vested jointly in the President pro

tempore of the Senate and the Speaker of the House of Representatives (or their designees), and

(3) the judicial branch of the Government, be vested in the Chief Justice of the United States (or his designee).

* * * * *

42 U.S.C. (Supp. V) 662(e) provides:

(e) The term "legal process" means any writ, order, summons, or other similar process in the nature of garnishment, which—

(1) is issued by (A) a court of competent jurisdiction within any State, territory, or possession of the United States (B) a court of competent jurisdiction in any foreign country with which the United States has entered into an agreement which requires the United States to honor such process, or (C) an authorized official pursuant to an order of such a court of competent jurisdiction or pursuant to State or local law, and

(2) is directed to, and the purpose of which is to compel, a governmental entity, which holds moneys which are otherwise payable to an individual, to make a payment from such moneys to another party in order to satisfy a legal obligation of such individual to provide child support or make alimony payments.

2. 5 C.F.R. 581.102(f) provides:

"Legal process" means any writ, order, summons, or other similar process in the nature of garnishment, which may include an attachment, writ of execution, or course ordered wage assignment, which—

(1) Is issued by:

(i) A court of competent jurisdiction, including Indian tribal courts, within any State, territory, or possession of the United States, or the District of Columbia;

(ii) A court of competent jurisdiction in any foreign country with which the United States has entered into an agreement which requires the United States to honor the process; or

(iii) An authorized official pursuant to an order of a court of competent jurisdiction or pursuant to State or local law, and

(2) Is directed to, and the purpose of which is to compel, a governmental entity, to make a payment from moneys otherwise payable to an individual, to another party to satisfy a legal obligation of the individual to provide child support and/or make alimony payments.

5 C.F.R. 581.102(g) provides:

(g) "Legal obligation" means an obligation to pay alimony and/or child support which is enforceable under appropriate State or local law.

5 C.F.R. 581.202(c) and (d) provides:

(c) Where it does not appear from the face of the process that it has been brought to enforce the legal obligation(s) defined in § 581.102(d) and/or (e), the process must be accompanied by a certified copy of the court order establishing such legal obligation(s).

(d) Where the State or local law provides for the issuance of legal process without a support order, such other documentation establishing that it was brought to enforce legal obligation(s) defined in § 581.102(d) and/or (e) must be submitted.

5 C.F.R. 581.301 provides:

> Upon proper service of legal process, together with all supplementary documents and information as required by §§ 581.202 and 581.203, the head of the governmental entity, or his/her designee, shall identify the obligor to whom that governmental entity holds moneys due and payable as remuneration for employment and shall suspend, i.e., withhold payment of such moneys for the amount necessary to permit compliance with the legal process.

5 C.F.R. 581.302 provides in part:

> (a) As soon as possible, but not later than fifteen (15) calendar days after the date of valid service of legal process, the agent designated to accept legal process shall send to the obligor, at his or her duty station or last known home address, written notice:
>
> * * * * *
>
> (b) The governmental entity may provide the obligor with the following additional information:
>
> (1) Copies of any other documents submitted in support of the legal process;
>
> (2) That the United States does not represent the interests of the obligor in the pending legal proceedings;
>
> (3) That the obligor may wish to consult legal counsel regarding defenses to the legal process that he or she may wish to assert; and
>
> (4) That obligors in the uniformed services may avail themselves of the protections provided in sections 520, 521, and 523 of the Soldiers' and

Sailors' Civil Relief Act of 1940 (50 U.S. Code App. 501 *et seq.*).

5 C.F.R. 581.305 provides in part:

(a) The governmental entity shall comply with legal process, except where the process cannot be complied with because:

(1) It does not, on its face, conform to the laws of the jurisdiction from which it was issued;

(2) The legal process would require the withholding of funds not deemed moneys due from, or payable by, the United States as remuneration for employment;

(3) The legal process is not brought to enforce legal obligation(s) for alimony and/or child support;

(4) It does not comply with the mandatory provisions of this part;

(5) An order of a court of competent jurisdiction enjoining or suspending the operation of the legal process has been served on the governmental entity; or

(6) Where notice is received that the obligor has appealed the underlying alimony and/or child support order, payment of moneys subject to the legal process shall be suspended until the government entity is ordered by a court, or other authority, to resume payments. However, no suspension action shall be taken where the applicable law of the jurisdiction wherein the appeal is filed requires compliance with the legal process while an appeal is pending.

(b) Under the circumstances set forth in § 581.305(a), or where the governmental entity is directed by the Justice Department not to com-

ply with the legal process, the entity shall respond directly to the court, or other authority, setting forth its objections to compliance with the legal process. In addition, the governmental entity shall inform the garnishor, or the garnishor's representative, that the legal process will not be honored. Thereafter, if litigation is initiated or threatened, the entity shall immediately refer the matter to the United States Attorney for the district from which the legal process issued. To ensure uniformity in the executive branch, governmental entities which have statutory authority to represent themselves in court shall coordinate their representation with the United States Attorney.

* * * * *

(d) Neither the United States, any disbursing officer, nor governmental entity shall be liable for any payment made from moneys due from, or payable by, the United States to any individual pursuant to legal process regular on its face, if such payment is made in accordance with this part. However, where a governmental entity negligently fails to comply with legal process, the United States shall be liable for the amount that the governmental entity would have paid, if the legal process had been properly honored.

3. 48 Fed. Reg. 26279-26294 (1983) amended the pertinent provisions of § 5 C.F.R. Pt. 581 (1983) as follows:

1. In § 581.102, paragraph (f)(1)(ii) is revised to read as follows:

§ 581.102 Definitions.

* * * * *

(f) * * *

(1) * * *

(ii) A court of competent jurisdiction in any foreign country with which the United States has entered into an agreement that requires the United States to honor such process; or

* * * * *

9. In § 581.305, paragraph (a)(6) is revised and paragraph (f) is added to read as follows:

§ 581.305 Honoring legal process.

(a) * * *

(6) Where notice is received that the obligor has appealed either the legal process or the underlying alimony and/or child support order, payment of moneys subject to the legal process shall be suspended until the governmental entity is ordered by the court, or other authority, to resume payments. However, no suspension action shall be taken where the applicable law of the jurisdiction wherein the appeal is filed requires compliance with the legal process while an appeal is pending. Where the legal process has been issued by a court in the District of Columbia, a motion to quash shall be deemed equivalent to an appeal.

* * * * *

(f) If a governmental entity receives legal process which, on its face, appears to conform to the laws of the jurisdiction from which it was issued, the entity shall not be required to ascertain whether the authority which issued the legal process had obtained personal jurisdiction over the obligor.

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